

NTSB Order No. EA-5158

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 24th day of May, 2005

MARION C. BLAKEY  
Administrator,  
Federal Aviation Administration,  
  
Complainant,  
  
v.  
  
CARLOS DeLUCA,  
  
Respondent.

Docket SE-17355

Respondent appeals the written order of Administrative Law Judge William A. Pope, II, served in this proceeding on April 14, 2005.<sup>1</sup> By that order, the law judge granted the Administrator's motion to dismiss as untimely the appeal respondent had taken from an emergency order revoking all of his airman certificates.<sup>2</sup>

<sup>1</sup> A copy of the law judge's order is attached.

<sup>2</sup> The emergency order revoked all airman certificates held by respondent, including his Pilot Certificate, Flight Instructor Certificate, Mechanic Certificate and Second-Class Medical Certificate. According to the emergency revocation order,

For the reasons set forth below, we deny respondent's appeal.

The Administrator served her emergency order of revocation on November 1, 2004, by sending copies by regular and certified mail to the most current address in respondent's official airman records.<sup>3</sup> Pursuant to Rule 53(a) of the Board's Rules of Practice in Air Safety Proceedings, respondent's appeal of the Administrator's order was due, "within 10 days after the date on which the Administrator's order was served," which in this instance, pursuant to the provisions of Rule 10, was actually November 12, 2004. See 49 C.F.R. §§ 821.53 and 821.10.<sup>4</sup> However, respondent did not submit a notice of appeal until he submitted to the law judge's office a letter dated March 25, 2005, and received on April 1, 2005. In that letter, respondent claimed he was working outside of the United States and returned

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(..continued)

respondent qualified only for a special issuance medical certificate on account of a history of alcoholism and cocaine abuse, and a condition of that special issuance certificate required respondent to have an, "appropriate physical exam for a second-class medical certification in 12-month intervals by Dr. Richard L. Dolsey, M.D., or his designee." On November 25, 2003, respondent allegedly applied for and was issued a second-class medical certificate by Dr. Richard W. Blanchar, but Dr. Blanchar was not a designee of Dr. Dolsey. In addition, respondent falsely answer "no" on the November 25, 2003, medical application to the question about whether he had ever failed a drug test, because in 2000 respondent had a verified positive result for cocaine after a required random drug test.

<sup>3</sup> The Administrator also sent a copy of the order by Federal Express, and records indicate that a person of unknown relationship to respondent signed for the Federal Express delivery on the morning of November 2, 2004.

<sup>4</sup> See also 49 U.S.C. § 46103(b)(2); Administrator v. Corrigan, NTSB Order No. EA-4806 at 7-9 (1999) (date of service via certified mail is the date of mailing).

during the past two years only several times for, "a few days and only had time to renew my medical [certificate]....Due to the short time I spent here in the last 6 months I forgot to open all the letters that were sent to me. I came back to this country on March 15, 2005 and I checked all my mail a few days after and found the letter." The Administrator thereafter filed her motion to dismiss respondent's appeal as untimely. Respondent replied on April 12, 2005, and, regarding the timeliness issue, reiterated that he did not receive the revocation order until "right after" returning home in March 2005, and he acknowledged that, "I know it was my responsibility to check my mail regularity [sic] unfortunately coming back exited [sic] to see my family I never did."

The law judge concluded that the Administrator properly served respondent, and that his appeal was due on November 12, 2004, unless good cause was shown for his delay. The law judge, noting respondent's statement that he, "forgot to open all the letters that were sent to me," found that respondent's professed lack of awareness of the revocation order was due to an absence of diligence on respondent's part notwithstanding actual receipt of the order, and determined that respondent had not shown good cause for his four-month delay in submitting his notice of appeal. He therefore granted the Administrator's motion to dismiss the appeal as untimely.

On appeal, respondent submits a one-page letter addressing briefly the merits of the Administrator's charges, and, as to the

timeliness issue, states:

In December 24<sup>th</sup>, 2004, I came from Panama only to renew my medical certificate again with Dr. Blanchar. On December 25<sup>th</sup>, 2004, I went back to Panama to board the tuna boat "El Templario" with destination to the Pacific Ocean, work that I've performed since 2 years ago as a helicopter pilot. Two months after being in the Pacific, I came back to USA on March 15<sup>th</sup> of 2005, this is when I received letter from the FAA that was sent on November of 2004 asking me to send all of the certificates. Immediately I sent all the documentation required, and this was the cause for the delay.

The Administrator has not filed a reply brief.

We share the law judge's view that respondent was properly served on November 1, 2004. Indeed, on appeal respondent admits that he was served at his correct address. Our caselaw clearly establishes that without good cause to excuse a failure to timely file a notice of appeal, a party's appeal must be dismissed.

See, e.g., Administrator v. Hooper, 6 NTSB 559 (1988).

Respondent has not demonstrated good cause for his delay in filing a notice of appeal.<sup>5</sup> By respondent's own admission, he had access to his mail in December 2004 when he was in the United States for the specific purpose of taking care of FAA-related business. Moreover, even if we were to conclude that respondent did not have a practical opportunity to review his FAA

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<sup>5</sup> See Administrator v. Diaz, NTSB Order No. EA-4990 (2002) at 3 (internal quotations and citations omitted) ("our procedural rules should be strictly applied. Undue laxity in the enforcement of our Rules of Practice will hinder the administration of justice in the long view by giving one party an unfair advantage over the other, and by removing the essential element of predictability from Board proceedings.").

correspondence until March 15, 2005, a conclusion we are reluctant to reach on the facts of this case, our analysis would still shift to an analysis of respondent's diligence in pursuing an appeal once he belatedly became aware of the revocation order. As we said in Administrator v. Croll,

[A]ssuming for purposes of argument, that respondent's absence from home during the period within which an appeal needed to be filed would have justified an extension of time to file one, it would only have warranted an extension of the deadline through the date ... he actually became aware of the order and its expired deadline for filing an appeal. It would not justify an extension of five days beyond that date. In other words, respondent's failure to notify the Board immediately of his desire to appeal from the Administrator's order, orally or in writing, precludes a finding on the facts before us that good cause exists to excuse the untimeliness of his notice of appeal.

NTSB Order No. EA-5009 at 3-4 (2002). Even though respondent acknowledges returning home on March 15, 2005, he dated his notice of appeal March 25<sup>th</sup> and it was not actually received until April 1<sup>st</sup>. Respondent has not demonstrated good cause for his delay in filing a notice of appeal, and, therefore, dismissal of his appeal of the Administrator's Emergency Order of Revocation was appropriate.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The law judge's order granting the Administrator's motion to dismiss is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.